



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

DEC 20 2010

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
**AND BY FACSIMILE**

Dr. Donald K. Allen  
4501 Market Street  
Youngstown, OH 44512  
Facsimile: (330)782-0231

RE: MUR 6330  
Bill Johnson, *et al.*

Dear Dr. Allen:

On December 14, 2010, the Federal Election Commission reviewed the allegations in your complaint dated July 16, 2010, and found that on the basis of the information provided in your complaint, and information provided by Bill Johnson, Bill Johnson for Congress, and Perry Chickonoski, in his official capacity as treasurer, there is no reason to believe that Bill Johnson violated 2 U.S.C. § 432(e)(1) and 11 C.F.R. § 101.1(a), and no reason to believe that Bill Johnson for Congress and Perry Chickonoski, in his official capacity as treasurer, violated 2 U.S.C. § 433(a). Accordingly, on December 14, 2010, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which more fully explains the Commission's findings, is enclosed.

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Dr. Donald K. Allen  
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The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 2 U.S.C. § 437g(a)(8).

Sincerely,

Christopher Hughey  
Acting General Counsel



BY: Peter G. Blumberg  
Assistant General Counsel

Enclosure – Factual and Legal Analysis

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**RESPONDENTS:** Bill Johnson  
Bill Johnson for Congress and  
Perry J. Chickonoski, in his  
official capacity as treasurer

**Bill Johnson for Congress and  
Perry J. Chickonoski, in his  
official capacity as treasurer**

**Perry J. Chickonoski, in his official capacity as treasurer**

**official capacity as treasurer**

## I. INTRODUCTION

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**This matter was generated by a complaint filed with the Federal Election Commission (the "Commission") by Donald K. Allen alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by Bill Johnson and Bill Johnson for Congress and Perry J. Chickonoski, in his official capacity as treasurer.**

**(the "Commission") by Donald K. Allen alleging violations of the Federal Election Campaign**

**Act of 1971, as amended (the "Act"), by Bill Johnson and Bill Johnson for Congress and Perry J.**

**Chickonoski, in his official capacity as treasurer.**

Specifically, the complaint in this matter alleges that Bill Johnson, who was a candidate for Representative in Ohio's 6<sup>th</sup> Congressional District, violated the Act by failing to timely register with the Commission as a "candidate" after raising in excess of \$5,000 in contributions. *See* 2 U.S.C. § 431(2). Because the allegation also implicates Johnson's authorized committee and whether it timely registered, the Commission notified Johnson and his authorized committee, Bill Johnson for Congress and Perry J. Chickonoski, in his official capacity as treasurer, (the "Committee") (collectively "Respondents") of the complaint.

**for Representative in Ohio's 6<sup>th</sup> Congressional District, violated the Act by failing to timely**

**register with the Commission as a “candidate” after raising in excess of \$5,000 in contributions.**

***See* 2 U.S.C. § 431(2).** Because the allegation also implicates Johnson's authorized committee

**and whether it timely registered, the Commission notified Johnson and his authorized committee,**

**Bill Johnson for Congress and Perry J. Chickonoski, in his official capacity as treasurer, (the**

**“Committees”) (collectively “Respondents”) of the complaint.**

In a joint response, Respondents claim that Johnson timely filed his Statement of Candidacy with the Commission on February 17, 2010, within 15 days of becoming a candidate, and timely designated his principal campaign committee, as required by the Act and the Commission's regulations. The response states that funds raised or spent prior to this date were for "testing the waters" activities, and were therefore exempt from the \$5,000 threshold.

**Candidacy with the Commission on February 17, 2010, within 15 days of becoming a candidate,**

**and timely designated his principal campaign committee, as required by the Act and the**

**Commission's regulations.** The response states that funds raised or spent prior to this date were

**for “testing the waters” activities, and were therefore exempt from the \$5,000 threshold.**

**2 U.S.C. § 432(e)(1); see also 11 C.F.R. § 101.1(a).**

As discussed below, based on the complaint, the response, and other available information, there is no available information suggesting that Johnson, or his Committee, conducted activities outside the “testing the waters” exception and became a candidate prior to Johnson’s February 11, 2010, declaration of candidacy. In addition, it appears that candidate Bill Johnson timely filed his Statement of Candidacy within 15 days of his declaration of candidacy and timely designated his principal campaign committee, and that his campaign Committee filed a Statement of Organization within 10 days of Johnson’s designation. Therefore, the Commission found no reason to believe that Bill Johnson violated 2 U.S.C. § 432(e)(1) and 11 C.F.R. § 101.1(a), and no reason to believe that Bill Johnson for Congress and Perry J. Chickonoski, in his official capacity as treasurer, violated 2 U.S.C. § 433(a), and closed the file.

## **II. FACTUAL AND LEGAL ANALYSIS**

### **A. Factual Summary**

During the 2009-2010 election cycle, Bill Johnson was a candidate for Representative in Ohio’s 6<sup>th</sup> Congressional District. The complainant, Donald K. Allen, states that in March 2009, he and Johnson met with Mahoning County Republican officials to seek the party’s support to run for Congress. Complaint at 1. According to Allen, they reached an understanding at the meeting that Allen would run in the 6<sup>th</sup> District and Johnson in the 17<sup>th</sup> District.<sup>1</sup> *Id.* The complainant further claims that when the party officials agreed at this meeting to offer their support to both Allen and Johnson, Allen considered himself a candidate, and he filed a Statement of Candidacy with the Commission on May 8, 2009, after he raised \$5,000 in contributions. Thus, Allen believes that based on the March 2009 meeting, Johnson too was required to file as a candidate with the Commission once he reached the \$5,000 threshold.

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<sup>1</sup> Mahoning County, Ohio, is within Ohio’s 6<sup>th</sup> and 17<sup>th</sup> Congressional Districts.

1 Complaint at 2. Although the complaint does not allege when exactly such a filing was due,  
2 according to disclosure reports filed with the Commission, it appears that Johnson reached the  
3 \$5,000 contribution threshold on November 2, 2009, and the \$5,000 expenditure threshold on  
4 December 9, 2009, making the registration due, under the complaint's interpretation, on  
5 November 17, 2009. *See* Johnson Committee, 2010 April Quarterly Disclosure Report. The  
6 complainant says that in January 2010, Johnson decided to run in the 6<sup>th</sup> District against Allen,  
7 rather than the 17<sup>th</sup> District, "for an easier race." Complaint at 1. Johnson won the Republican  
8 nomination in the May 4, 2010, primary election, and he won the general election.

9 The only specific violation alleged in the complaint is that Johnson failed to timely  
10 register as a candidate after exceeding the relevant contribution threshold. Complaint at 2. The  
11 complainant claims that although Johnson "was campaigning under an 'exploratory committee,'  
12 he was actually laying the groundwork and soliciting donations for his campaign." More  
13 broadly, the complaint also alleges that Johnson "has not followed FEC rules and regulations  
14 during [the] campaign, and has otherwise consistently exhibited deceptive practices," including  
15 that he apparently hired a fundraiser who was under contract to a competitor. *Id.* at 1 and 2.

16 Respondents generally deny the complaint's allegations, claiming that any funds raised or  
17 disbursed made prior to Johnson's February 11, 2010, declaration of candidacy were for  
18 "testing the waters" to determine the feasibility of a Congressional campaign. Response at 2.  
19 Respondents state that Johnson began conducting exploratory activities in October 2009,  
20 including polling, traveling to meet constituents, and making telephone calls to gauge "the depth  
21 of possible support." *Id.* The Response does not address the March 2009 meeting and does not  
22 mention any exploratory or other campaign activity that may have occurred between March 2009  
23 and October 2009. Respondents submitted several communications demonstrating that its

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1 activities were exploratory, including: (1) pages from the Committee's exploratory committee  
2 website, which included the statements "as I consider a run," and "many have encouraged me to  
3 run for office"; (2) pledge cards that include the disclaimer "paid for by the Bill Johnson for  
4 Congress Exploratory Committee"; (3) a copy of a biographical packet entitled "Get to Know  
5 Bill Johnson" that was offered to potential supporters who "asked for documentation," and  
6 contains an introduction that states that Johnson was "humbled and honored that folks are  
7 encouraging him to run for public office"; and (4) a news article dated February 2, 2010, in  
8 which Johnson is described as "a conservative Republican who is considering a run for the U.S.  
9 House from either the 17<sup>th</sup> or 6<sup>th</sup> Congressional Districts" and is quoted as saying "My goal in  
10 exploring a campaign was to determine whether or not my experience as a career military officer,  
11 a businessman, and someone who lives conservative values could make a difference in  
12 Washington." Response attachments.

13 Johnson ultimately declared his candidacy for Ohio's 6<sup>th</sup> District seat on February 11,  
14 2010. Response at 2. Respondents claim that at no time prior to declaring his candidacy did  
15 Johnson publicly indicate that he was a candidate. Response at 3. Further, Johnson asserts that  
16 on February 17, 2010, which was within 15 days of becoming a candidate, he filed his Statement  
17 of Candidacy with the Commission, as required by the Act and the Commission's regulations. *Id*  
18 at 2 and 3. Respondents also state that the Committee filed its Statement of Organization on the  
19 same day, and properly disclosed its "testing the waters" activity in its first report filed with the  
20 Commission. *Id* at 3. In its April Quarterly report filed with the Commission on April 17, 2010,  
21 and covering the period of October 1, 2009, to March 31, 2010, the Committee disclosed just  
22 over \$96,000 in receipts and over \$74,000 in disbursements covering the claimed "testing the  
23 waters" period.

**B. Legal Analysis**

An individual becomes a candidate for federal office – and thus triggers registration and reporting requirements under the Act – when he or she has received or made in excess of \$5,000 in contributions or expenditures. 2 U.S.C. § 431(2). The Commission created a limited exemption to the definitions of “contribution” and “expenditure” for “testing the waters” activity, allowing individuals to conduct certain activities designed to evaluate a potential candidacy. *See* 11 C.F.R. §§ 100.72 and 100.131; *see also* Explanation and Justification for Final Rules on Payments Received for Testing the Waters Activities, 50 Fed. Reg. 9592 (Mar. 13, 1985) (“*Testing the Waters E&J*”); Explanation and Justification to the Disclosure Regulations, House Doc. No. 95-44, Communication from the Chairman, FEC, Transmitting the Commission’s Proposed Regulations Governing Federal Elections, at 40 (Jan. 12, 1977). An individual who is “testing the waters” may conduct polls, make telephone calls, and travel to determine the viability of the potential candidacy, *see* 11 C.F.R. § 100.72(a); 11 C.F.R. §100.131(a), but need not register or file disclosure reports with the Commission unless and until the individual subsequently decides to run for Federal office or conducts activities that indicate he or she has decided to become a candidate. All funds raised and spent for “testing the waters” activities are, however, subject to the Act’s limitations and prohibitions. *See id.*

Commission regulations set out five non-exhaustive factors to be considered in determining whether an individual has decided to become a candidate. An individual can indicate that he has gone beyond “testing the waters” and has decided to become a candidate by (1) using general public political advertising to publicize his intention to campaign for Federal office; (2) raising funds in excess of what could reasonably be expected to be used for exploratory activities or undertaking activity designed to amass campaign funds that would be

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1 spent after he becomes a candidate; (3) making or authorizing written or oral statements that  
2 refer to him as a candidate for a particular office, (4) conducting activities in close proximity to  
3 the election or over a protracted period of time; and (5) taking action to qualify for the ballot  
4 under state law. 11 C.F.R. § 100.72(b); 11 C.F.R. § 100.131(b).

5 Once an individual meets the \$5,000 threshold and has decided to become a candidate, he  
6 has 15 days to designate a principal campaign committee by filing a Statement of Candidacy  
7 with the Commission. *See* 2 U.S.C. § 432(e)(1); 11 C.F.R. § 101.1(a). The principal campaign  
8 committee must then file a Statement of Organization within ten days of its designation, *see* 2  
9 U.S.C. § 433(a), and must file disclosure reports with the Commission in accordance with 2  
10 U.S.C. §§ 434(a) and (b).

11 The complaint states that Johnson became a candidate and was required to file his  
12 Statement of Candidacy after he received \$5,000 in contributions, which occurred in November  
13 2009, several months prior to Johnson's February registration. However, the Commission has  
14 previously determined that exceeding the contribution threshold, or even raising a more  
15 significant amount of contributions (*e.g.* \$100,000 or more), was not sufficient by itself to  
16 remove a candidate and his or her activities from the "testing the waters" exemption.<sup>2</sup> Instead, in  
17 determining whether an individual has gone from "testing the waters" to becoming a  
18 "candidate," the Commission has considered whether the individual has engaged in activities or

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<sup>2</sup> *See, e.g.*, MUR 6224 (Fiorina) (no reason to believe where a U.S. Senate candidate's campaign committee raised in excess of \$3.5 million in contributions during the "testing the waters" phase of a campaign); MUR 5703 (Rainville) (no reason to believe where a U.S. Representative candidate's campaign committee raised \$100,000); MUR 5661 (Butler) (no reason to believe where a U.S. Senate candidate's campaign committee raised over \$100,000); MUR 5934 (Fred Thompson) (allegations dismissed and file closed where a U.S. Presidential candidate's campaign committee raised over \$950,000); and MUR 2710 (Judge Harvey Sloane) (no reason to believe where a U.S. Senate candidate's campaign committee raised \$200,000).



1 made statements that would indicate that he or she has decided to run for federal office.<sup>3</sup> Once  
2 an individual engages in these activities, he or she is a candidate under the Act and the “testing  
3 the waters” exception is no longer available.

4 In this matter, the complainant offers no information demonstrating that Johnson had  
5 made a decision to run prior to officially declaring his candidacy, or that any of Johnson’s pre-  
6 candidacy activities were anything but exploratory. The complaint suggests that Johnson made  
7 the decision during the March 2009 meeting with Republican officials. The Respondents do not  
8 address the meeting in their response, but according to the complaint, Johnson asked at the  
9 meeting if the Mahoning County Republican Party officials would support him to run in the 17<sup>th</sup>  
10 Congressional District. However, Johnson ultimately ran in the 6<sup>th</sup> District, demonstrating the  
11 preliminary nature of the meeting.

12 Further, the Respondents claim that at no time during the “testing the waters” period did  
13 it conduct activities that would have triggered “candidate status” as defined by the Commission’s  
14 regulations, and they claim that Johnson and his agents “made it clear at every opportunity that  
15 the effort was exploratory in nature.” None of the communications submitted by Respondents  
16 include any statement that could be reasonably construed to imply that Johnson had declared his

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<sup>3</sup> See, e.g., MUR 5363 (Sharpton) (candidate no longer “testing the waters” when he published a book including statements such as “It is on these qualities that I am seeking the Presidency of the United States in 2004”); MUR 5693 (Aronsohn) (individual became a candidate when he sent a solicitation letter that included statements such as “But I have the energy, the experience, and the determination to win this race. And as evidenced by the attached news article, I am ready to begin fighting for our future...now”; “Every dollar we receive in the next few weeks can help us prepare for this fight against Scott Garrett”; and “We have come a long way in just a few short weeks. And with your support, we can go the distance”); and MUR 5251 (Rogers) (candidate no longer “testing the waters” when he reportedly said, “I want to be your congressman and need your help to win the seat” at a fundraising event, and sent a fundraising letter that contained the statement, “I know that I will effectively serve your interests in Congress and that because of the close working relationship with the President and the leadership of Congress that I will immediately work for the benefit of Colorado”).

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1 candidacy before February 11, 2010, and, in fact, the materials seem to state carefully that  
2 Johnson was only considering his options.

3 In addition to the documents submitted by Respondents, the Commission also reviewed  
4 publicly available information such as news articles, social network sites, and website articles,  
5 but did not find any instance in which Johnson indicated that he was a candidate prior to his  
6 declared candidacy. For example, posts on the Committee's official Facebook page, created on  
7 December 17, 2009, make no mention of a candidacy or a campaign for federal office, prior to  
8 February 11, 2010. In contrast, posts made after his declaration of candidacy clearly refer to his  
9 campaign for office, and a post the day after he declared his candidacy sought signatures that  
10 would qualify Johnson for the state ballot. See <http://www.facebook.com/BillJohnsonLeads>.

11 Also, news reports published prior to February 2010 refer to Johnson as a potential candidate, or  
12 report that he is considering a run. See, e.g., David Skolnick, *Of Valley's 5 Congress Members,*  
13 *Ryan has Lowest Campaign Fund*, The Valley's Homepage (February 2, 2010),

14 <http://www.vindy.com/news/2010/feb/02/of-valleys8217-5-congress-members-ryan-h/?print>

15 ("Bill Johnson of Poland, who's considering a run as a Republican in the 17th District, said he  
16 raised more than \$107,000 in the last three months of the year for his congressional exploratory  
17 committee"). Finally, there is no information to indicate that the Committee amassed campaign  
18 funds to be used after the "testing the waters" period. See 11 C.F.R. §§ 100.72(b)(2) and  
19 100.131(b)(2). Johnson's disclosure reports indicate that the exploratory committee spent over  
20 \$74,000 of \$96,000 it raised during the exploratory period, so it does not appear to have been  
21 amassing funds for later use in the election.

22 There is no available information suggesting that Johnson conducted activities that would  
23 have ended the "testing the waters" period and made Johnson a candidate, as defined by the Act,

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1 prior to his February 11, 2010, declaration of candidacy. Accordingly, the Commission found no  
2 reason to believe that Bill Johnson violated 2 U.S.C. § 432(e)(1) and 11 C.F.R. § 101.1(a) by  
3 failing to timely file his Statement of Candidacy with the Commission and to designate his  
4 principal campaign committee, and found no reason to believe that Bill Johnson for Congress  
5 and Perry J. Chickonoski, in his official capacity as treasurer, violated 2 U.S.C. § 433(a) by  
6 failing to timely file a Statement of Organization with the Commission.

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